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Honorable Joan M. AZRACK
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

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U.S. DISTRICT COURT E.D.N.Y.

★ OCT 17 2024 ★

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October 14, 2024

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OCT 17 2024

Re. *Mergenthaler et al. v. Enzolytics et al.* – Docket # NY23-CV-6926

REC'D IN PRO SE OFFICE
OCT 17 2024
Dear Judge Azrack:

I am one of the two plaintiffs *pro se* in the above civil action. I must write this letter to your Honor to respectfully ask the Court not to delay this proceeding any further for the reason that is fully detailed in my letter dated October 13 2024 to Hon. Magistrate Judge Wicks. [Copy attached]

Indeed, his honor has written to the parties since October 3, 2024, an Order directing us to appear on December 12, 2024, in person in Court to orally argue defense motion to dismiss complaint, which motion was already fully briefed and ripe for adjudication by this Court within at most a few more days.

For reason fully set forth in the Letter to Honorable Wicks, [Enclosed] may it please the Court to reconsider the assignment and adjudicate the motion as soon as possible. It was submitted for adjudication on August 26, 2024, [DE #52] and could have been decided within 30 days thereafter. It is surprising to the undersigned that Magistrate Wicks did not read all your Honor's October 2 2024 Order or follow the Court's simple straightforward instructions, which never meant to grant his honor the full power to take over the case from your honor, unless there is an agreement of **all** the parties.

Thank you, your honor, for your attention and consideration.

Very Truly Yours,

Dmt MacTruong

AFFIDAVIT OF SERVICE

On October 14, 2024, I served by U.S. First Class Mail, hand delivery, or email the true copies of the within document(s):

- (1) Letter to Hon. Joan Azrack to Cancel Assignment.**
- (2) SUPPORTING DOCUMENTS**

upon the following parties and/or individuals:

Magistrate Judge James M. WICKS
United States District Court
For the Eastern District of NY

New York Eastern District
100 Federal Plaza
Central Islip, NY 11722

James W. Zimbler,
110 Smithtown Blvd, Ste 3
Nesconset, NY 11767
(631) 257-5454

CHASE BANK,
1000 Rocky Run Pkwy
Wilmington, DE 19803

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Nesconset, NY 11767
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Harry Zhabilow
2000 North Sentra Express Way
Plano, Texas 75074.

Extreme Mobile Coatings Worldwide Corp.,
110 Smithtown Blvd, Ste 3
Nesconset, NY 11767

Billy Ray Miller,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Structural Enhancement Technologies Corporation,
110 Smithtown Blvd, Ste 3
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Charles Cotropia,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

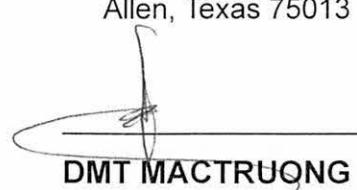
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(631) 257-5454

ENZOLYTICS, Inc.
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

IMMUNOTECH LABORATORIES, INC.,
2000 North Sentra Express Way
Plano, Texas 75074.

Biogenysis, Inc.,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Dated: 14th Day of October, 2024


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Honorable James M. WICKS
U.S. Magistrate Judge
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

October 13, 2024

Re. *Mergenthaler et al. v. Enzolytics et al.* – Docket No. 23-cv-6926

Dear Magistrate Judge Wicks:

I am one of the two plaintiffs *pro se* in the above civil action. On or about October 7, 2024, I received a copy of Judge Azrack's following ORDER REFERRING MOTION:

"The motion at DE 52 by Defendants JP Morgan Chase Bank, N.A. and Harry Zhabilov to dismiss this case is referred to Magistrate Judge James M. Wicks for a report and recommendation. The parties are notified that, if all parties consent, Judge Wicks may conduct all proceedings in this action--including dispositive motion practice, trial, and entry of a final judgment. See 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; E.D.N.Y. Loc. Civ. R. 73.1. Attached to DE 7 is a blank copy of the consent form that should be filled out, signed, and filed electronically if all parties wish to so consent. The form may also be accessed at the following link: <https://img.nyed.uscourts.gov/files/forms/MJConsentForm.pdf>. Any party may withhold its consent without adverse substantive consequences. Do NOT file the consent form unless all parties have signed it. (...) Ordered by Judge Joan M. Azrack on 10/2/2024. (...)"

To date no party has agreed that Hon. Azrack should be relieved of her Honor's ultimate careful daily control of this proceeding, a great job her honor has done so far. All parties including the undersigned believe that her Honor is quite qualified to do her job in this matter, which is truly an open and shut case. The undersigned was even surprised to see that her honor had the unexpected idea of assigning the simple issue being frivolously raised by Chase and Zhabilov's meritless 12(b) joint motion to dismiss, which was glaringly designed to protract this simple action for a few more months, in their favor, while upon information and belief,

the Defendant Cotropia has been busy planning to transfer Enzolytics's shares that are actually those of Plaintiff Peter Mergenthaler herein to some other entities for dissipation purpose.

As your Honor might have noticed, this case commenced in the U.S. District Court for the Southern District of New York on August 8, 2023, then was transferred to this EDNY by Judge Laura Taylor Swain's order dated September 8, 2023, finding that the proper venue of this proceeding is in this Court. More than a full year has passed and nothing of substance has been under review due to Chase's well-known tactics of delaying the action because they have no meritorious defenses at all.

May it please therefore your honor to file a report and recommendation in this matter within the next two weeks or before the end of this month, as clearly requested by Judge Azrack in her honor's Order dated October 2, 2024. [See, above]

If your honor is too busy or has no interest in this case, which none of the party hereto expects you to have, kindly promptly decline the assignment and ask the Court to adjudicate or assign it to some other appropriate authority.

In any event, this letter is to notify your honor that the undersigned and my co-plaintiff Mr. Peter Mergenthaler, who, 84 and blind, may not and will not appear for oral argument on December 12, 2024, in person in your honor's courtroom. None of us are lawyers or have a legal obligation to orally argue our case in court against licensed lawyers.

We have submitted our formal written objection in our formal opposition brief. It should provide the Court with a lot more information to decide a 12(b) motion, which should always be decided by submission of papers, and never by oral argument in person in court.

Finally, the undersigned must insist that time is of the essence, any tactics by Defendants to delay this case any further can only demonstrate that they do not have any meritorious defense. Consequently, their motion to dismiss complaint must be denied.

Thank you, your Honor, for your attention.

Very Truly Yours,

Dmt MacTruong

MIME-Version:1.0
From:ecf_bounces@nyed.uscourts.gov
To:nobody@nyed.uscourts.gov
Bcc:
--Case Participants: Tyler Jay Kandel (tkandel@shermanatlas.com), Anthony Carmine Valenziano (avalenziano@shermanatlas.com), Antranig Niaz Garibian (ag@garibianlaw.com, kb@garibianlaw.com, sr@garibianlaw.com), Magistrate Judge James M. Wicks (diana_nelson@nyed.uscourts.gov, doreen_flanagan@nyed.uscourts.gov, harini_maragh@nyed.uscourts.gov, james_wicks@nyed.uscourts.gov, joseph_pizzinigrillo@nyed.uscourts.gov), Judge Joan M. Azrack (andrew_stambouliidis@nyed.uscourts.gov, ecf_azrack@nyed.uscourts.gov, joan_azrack@nyed.uscourts.gov, laurie_coleman@nyed.uscourts.gov, robert_terranova@nyed.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:<19368938@nyed.uscourts.gov>
Subject:Activity in Case 2:23-cv-06926-JMA-JMW Mergenthaler et al v. Zimbler et al
Scheduling Order
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 10/3/2024 at 11:45 AM EDT and filed on 10/3/2024

Case Name: Mergenthaler et al v. Zimbler et al

Case Number: 2:23-cv-06926-JMA-JMW

Filer:

Document Number: No document attached

Docket Text:

SCHEDULING ORDER: The parties are directed to appear for oral argument before the undersigned on Defendants Joint Motion to Dismiss (ECF No. [52]), in-person, on **December 12, 2024 at 10:00 a.m.** in Courtroom 1020 at 100 Federal Plaza, Central Islip. Defendants shall provide courtesy copies of all motion papers to the undersigned on or before **October 11, 2024**. So Ordered by Magistrate Judge James M. Wicks on 10/3/2024. (JDP).

2:23-cv-06926-JMA-JMW Notice has been electronically mailed to:

Tyler Jay Kandel tkandel@shermanatlas.com

Antranig Niaz Garibian ag@garibianlaw.com, kb@garibianlaw.com, sr@garibianlaw.com

Anthony Carmine Valenziano avalenziano@shermanatlas.com

2:23-cv-06926-JMA-JMW Notice will not be electronically mailed to:

Mac Truong
35 Journal Square
Suite 419
Jersey City, NJ 07306

Peter Mergenthaler
494 Boston Post Road
#C-304
Wayland, MA 01778

AFFIDAVIT OF SERVICE

On October 13, 2024, I served by U.S. First Class Mail, hand delivery, or email the true copies of the within document(s):

- (1) Letter to Hon. James M. Wicks to expedite proceeding**
- (2) SUPPORTING DOCUMENTS**

upon the following parties and/or individuals:

Hon. Joan M. Azurack
United States District Court
New York Eastern District
100 Federal Plaza
Central Islip, NY 11722

James W. Zimbler,
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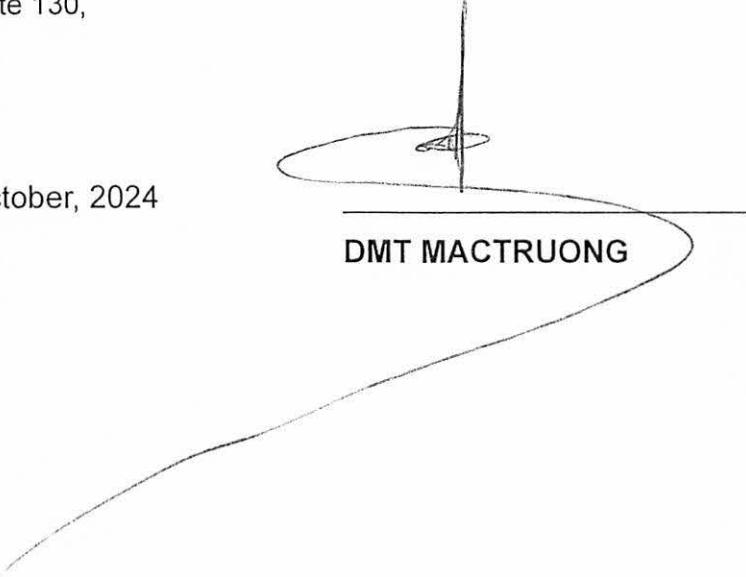
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Biogenesis, Inc.,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Virogentics, Inc.,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Dated: 13th Day of October, 2024

DMT MACTRUONG

H. Azrael J. Doe M. Azrael

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TO:

**CLERK OF THE U.S. COURT
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EASTERN DISTRICT OF NY
100 Federal Plaza
Central Islip, NY 11722**